SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. ~~781~~ 28

CLOVERLEAF BUTTER COMPANY, A CORPORATION,
Petitioner,

vs.

HAYGOOD PATTERSON AS COMMISSIONER OF AGRICULTURE & INDUSTRIES OF THE STATE OF ALABAMA, AND GEORGE H. MARSH AS DIRECTOR OF THE DIVISION OF AGRICULTURAL CHEMISTRY IN THE DEPARTMENT OF AGRICULTURE & INDUSTRIES OF THE STATE OF ALABAMA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

HORACE C. WILKINSON,
ERLE PETTUS,
VICTOR H. SMITH,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 781

CLOVERLEAF BUTTER COMPANY, A CORPORATION,
Petitioner, and Appellant below,

vs.

HAYGOOD PATTERSON AS COMMISSIONER OF AGRICULTURE & INDUSTRIES OF THE STATE OF ALABAMA, AND GEORGE H. MARSH AS DIRECTOR OF THE DIVISION OF AGRICULTURAL CHEMISTRY IN THE DEPARTMENT OF AGRICULTURE & INDUSTRIES OF THE STATE OF ALABAMA,
Respondents, and Appellees below.

PETITION FOR WRIT OF CERTIORARI.

To the United States Circuit Court of Appeals for the Fifth Circuit

To the Honorable Supreme Court of the United States:

Your petitioner, the Cloverleaf Butter Company, a corporation, organized under the laws of the State of Alabama, respectfully prays that a writ of certiorari issue out of this Honorable Court to review the final decree of the United

States Circuit Court of Appeals for the Fifth Circuit, rendered in the above entitled cause on the 14th day of January, 1941, and reported in the 116 F. (2d) at page 227, whereby the said Circuit Court of Appeals overruled petitioner's application for a rehearing of the judgment or decree rendered by said court on the 14th day of December, 1940, wherein said Circuit Court of Appeals affirmed the judgment and decree of the District Court of the United States for the Middle District of Alabama rendered in said cause on the 23rd day of July, 1940, dismissing petitioner's action on motion of respondent's without a hearing on the merits, and in support of its petition for a writ of certiorari this petitioner respectfully shows:

I.

Summary Statement of the Matter Involved.

Petitioner is engaged, under Federal license, and has been so engaged for 20 years, in the manufacture of renovated butter for sale and shipment in interstate commerce at its plant in Birmingham.

Country butter—known to the trade as packing stock butter—bought in interstate commerce and concentrated at petitioner's plant solely for the purpose of manufacture, is the basic raw material used in the manufacture of renovated butter for sale and shipment in interstate commerce.

Renovated or process butter is manufactured by melting the country butter and then washing, straining, cleansing, pasteurizing, clarifying and refining the melted butter fat and mixing it with a pasteurized milk product and rechurning it.

During the time that petitioner has been in the renovated butter business the Federal Government has exercised exclusive control of the sanitary inspection and regulation of

the manufacture of renovated butter for sale and shipment in interstate commerce as required by Section 2325 I. R. C., which provides:

> "The Secretary of Agriculture is authorized and required to cause a rigid sanitary inspection to be made at such times as he may deem proper or necessary, of all factories, and storehouses where process or renovated butter is manufactured, packed or prepared for market, and of the products thereof and materials going into the manufacture of the same. * * * And he shall also have the power to ascertain whether or not materials used in the manufacture of said process or renovated butter are deleterious to health or unwholesome in the finished product, and in case such deleterious or unwholesome materials are found to be used in product intended for exportation or shipment into the States or in course of exportation in shipment he shall have power to confiscate the same."

About the middle of April, 1939 the respondents, who are officers of the State of Alabama, began to seize petitioner's packing stock butter in interstate commerce. This series of seizures, aggregating 20,924 pounds contained until the bill was filed in the District Court about 14 months later. And, all of the butter seized was being held by the respondents at the time the bill was filed. The respondents claim that they are acting under the Alabama Agricultural Code of 1927, which is a substantial reenactment of the 1923 Act. Ala. Gen. Acts, 1923, 399-550.

This Act was construed by the Supreme Court of Alabama in *State* v. *Cecil*, 216 Ala. 391. In that case it was held the enactment of the Agricultural Code was in the exercise of the police power of the State, *but the operation of the Code was confined to intrastate commerce.*

Petitioner's employs some 25 people in its Birmingham plant. The effect of the repeated seizures of raw material at different times seriously interfered with the operation of

Petitioner's plant, caused a shutdown of the plant at different times, and its employees to be demoralized and remain idle from time to time, along with great financial loss to Petitioner, and placed an intolerable burden on interstate commerce (R. 3-23).

To prevent a repetition, and threatened continuance of the seizure of Petitioner's packing stock butter in interstate commerce, Petitioner filed a bill in the District Court of the United States for the Middle District of Alabama against the Commissioner of Agriculture and Industries of the State of Alabama, and the Director of the Division of Agricultural Chemistry in the Department of Agriculture and Industries of the State of Alabama, seeking to enjoin and restrain them from seizing Petitioner's packing stock butter moving in interstate commerce to Petitioner's plant in Birmingham, Alabama; also to enjoin and restrain them from seizing Petitioner's raw material in interstate commerce in Petitioner's plant for manufacture into process or renovated butter for sale and shipment in interstate commerce (R. 3-23).

The jurisdiction of the District Court was asserted under the Acts of Congress, known as the Renovated Butter Act, and Regulations promulgated thereunder, and upon the ground that more than $8,000.00 was involved and a right arising under a Federal Statute was being violated as was found by the United States Circuit Court of Appeals for the Fifth Circuit.

The Record shows that the regulation of process or renovated butter in interstate commerce originated in an Act of Congress, known as the Renovated Butter Act, approved on May 9, 1902, 32 Stat. 193-197. This was amended by an Act of Congress approved August 10, 1912 entitled "An Act for Making Appropriations for the Department of Agriculture for the Fiscal Year ending June 30, 1919" (37 Stat. 273) and extended the applicable provisions of the

Meat and Inspection Act of June 30, 1906, 34 Stat. at Large 676, as reenacted March 4, 1907, 34 Stat. 1260-1265, to the Renovated Butter Industry.

Pursuant to the Acts of Congress, both the Secretary of Agriculture and the Treasury Department have promulgated "regulations for carrying into effect the process or renovated butter act".

In Section 5 of the original Renovated Butter Act, later Section 995 U. S. C. A., Title 26, now Section 2325 of the I. R. C. provides:

> "SEC. 2325. INSPECTION, MANUFACTURE, AND MARKETING OF PROCESS OR RENOVATED BUTTER.
>
> *The Secretary of Agriculture is authorized and required to cause a rigid sanitary inspection to be made, at such times as he may deem proper or necessary, of all factories and storehouses where process or renovated butter is manufactured, packed, or prepared for market, and of the products thereof and materials going into the manufacture of the same.* All process or renovated butter and the packages containing the same shall be marked with the words "Renovated Butter" or "Process Butter" and by such other marks, labels, or brands and in such manner as may be prescribed by the Secretary of Agriculture, and no process or renovated butter shall be shipped or transported from its place of manufacture into any other State or Territory or the District of Columbia, or to any foreign country, until it has been marked as provided in this section. *The Secretary of Agriculture shall make all needful regulations for carrying this section and sections 2326 (c) and 2327 (c) into effect and shall cause to be ascertained and reported from time to time the quantity and quality of process or renovated butter manufactured, and the character and the condition of the material from which it is made. And he shall also have power to ascertain whether or not materials used in the manufacture of said process or renovated butter are deleterious*

to health or unwholesome in the finished product, and in case such deleterious or unwholesome materials are found to be used in product intended for exportation or shipment into other States or in course of exportation or shipment he shall have power to confiscate the same." (Emphasis supplied).

The Regulations are set out in original record beginning page 27. Pertinent parts are set out here in appendix.

In the Agricultural Department Appropriation Act of August 10, 1912, codified as Section 997 (b) (c), Title 26 U. S. C. A. it was provided:

> "That the sanitary provisions for slaughtering, meat canning, or similar establishments as set forth in the Act of June 30, 1906, 34 Stat. 676, are hereby extended to cover renovated butter factories as defined in the Act of May 9, 1902 under such regulations as the Secretary of Agriculture may prescribe."

This Statute is now Section 2327 of the I. R. C. The Meat Inspection Acts are codified as Sections 71 to 93 of Title 21 U. S. C. A. The pertinent sections being set out in the appendix.

In Regulation 4, Section 1, a rigid sanitary inspection is required to be made of the character and condition of the materials going into the manufacture of process or renovated butter.

In Regulation 7 the Secretary of Agriculture prescribed in detail *the method* by which it is to be determined whether or not materials used in the manufacture of process or renovated butter are deleterious to health or unwholesome in the finished product.

Section 71 of the Alabama Agricultural Code, 1927 recognizes renovated butter manufactured from original packing stock butter as a legitimate article of commerce and requires

it to be labeled renovated butter when sold in the State. This is the only Alabama Statute making reference to, or attempting to regulate renovated butter.

Section 37 of the Alabama Agricultural Code, 1927 provides:

> "37. Possession: Sale and Delivery of Prohibited Articles.—No person within this State shall manufacture for sale therein, have in possession with intent to sell, offer or expose for sale, sell, or deliver *any article of food* or drugs *which is adulterated* or misbranded within the meaning of this Article."

In Section 39 it is also provided:

> "An article shall be deemed adulterated *in the case of food:* * * * Sixth. If it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, * * *"

The respondent officers of the State of Alabama acting under the color of these provisions and pursuant to the authority they claim the statutes confer on them, seized at different times, the 16 different lots of raw material in interstate commerce (R. 14-15).

The respondents will, unless enjoined and restrained, continue to interfere with Petitioner's business by inspecting, seizing and holding raw material in interstate commerce used by Petitioner in the manufacture of process butter for sale or shipment in interstate commerce (R. 16).

In the District Court the respondents moved to dismiss the bill on two grounds, (1) because the complaint failed to state a claim against the defendants upon which relief can be granted, and (2) because there was no diversity of citizenship and no substantial Federal question presented (R. 45).

By written stipulation the parties eliminated questions of fact and confined the case to questions of law which, briefly stated, were:

(1) Has Congress preempted and completely occupied the field as to the manufacture of process butter for sale and shipment in interstate commerce?

(2) Is inspection and seizure of packing stock butter in interstate commerce by State officers excluded by the Federal Statutes and Regulations?

(3) Is the Secretary of Agriculture of the United States the sole judge of the fitness and suitability of packing stock butter in interstate commerce for use in the manufacture of process or renovated butter for sale and shipment in interstate commerce?

(4) It was also stipulated that: State and Federal standards relating to the fitness and suitability of packing stock butter in interstate commerce are not in conflict (R. 48).

II.

Opinions Below.

No opinion was rendered by the District Court, other than an expression in its decree on page 51 of the record.

The opinion of the Circuit Court of Appeals is reported in 116 F. (2d) 227, where it was held by the majority of the court that to obtain relief from enforcement of State police regulation upon the claim the Federal Regulations have preempted the field it must appear that there is in effect an express prohibition against State regulation or there is such an essential conflict between State and Federal Laws and Regulations as that compliance with the one is defiance of the other, and therefore a prohibition against State regulation must be implied, and that State officers enforcing seizure police regulation with regard to foods, will not be

enjoined at the suit of persons complaining of them merely because there exists similar Federal laws and regulations in respect to the same subject matter and there has been no Federal seizure.

III.

Jurisdiction.

The jurisdiction of this Honorable Court is invoked under Section 240 of the Judicial Code as amended, by Acts of February 13, 1925, Subsections (a) and (b) separately and severally, U. S. C. A., Title 28, Section 347, and also rule 38 of the revised rules of the Supreme Court of the United States adopted February 13, 1939.

Lemke v. *Farmers Grain Co.*, 258 U. S. 50.

IV.

Reasons Relied On for the Allowance of the Writ.

1. United States Circuit Court of Appeals for the Fifth Circuit, in construing the Renovated Butter Act of May 9, 1902, as amended, U. S. C. A. Int. Rev. Code Chap. 16, Sections 2320 to 2327, decided an important question of Federal law, which has not been, but should be settled by this Court. The importance of the question arises from the fact that Congress by special enactment has taken over the regulation of the renovated butter industry in interstate commerce; it has by reference and adoption extended all applicable provisions of the meat inspection laws to the same industry; the renovated butter industry has an important place in interstate commerce and the meat industry at the present time is one of the major sources of the Nation's food supply, the importance of which cannot be exaggerated. The majority opinion of the Circuit Court of Appeals in this case has left the construction and application of the

statutes involved in a state of confusion and uncertainty as to which sovereignty shall control the subject matter in interstate commerce, the effect of the opinion being to hold that State authorities may intervene and to invite them to exercise joint control with the agencies appointed by Congress.

Petitioner claims the right, under the Federal statutes, to have packing stock butter transported in interstate commerce to its plant in Birmingham, Alabama, for the purpose of being there manufactured into a pure and wholesome process butter, for sale and shipment in interstate commerce, without interference on the part of the respondents who are officers of the State of Alabama.

The respondents, officers of the State of Alabama, assert the right to seize packing stock butter even *before it reaches its destination* moving in interstate commerce to petitioner's plant in Birmingham for the sole purpose of being manufactured into a pure and wholesome finished product for sale and shipment in interstate commerce.

They also assert the right to seize packing stock butter which has been transported to petitioner's plant in Birmingham, Alabama, for the purpose of being there manufactured into a pure and wholesome finished product, for shipment and sale in interstate commerce, after delivery to said plant, and during the temporary period it is held pending its manufacture into renovated butter, for sale and shipment in interstate commerce.

2. The Circuit Court of Appeals decided an important question of Federal law very probably in conflict with applicable decisions of this Court.

Petitioner earnestly insists that *Federal legislation specifically requiring the United States Secretary of Agriculture to inspect packing stock butter in interstate commerce excludes like action by State officers*, and that any State

legislation purporting to authorize State officers to inspect the commodity in interstate commerce would be superseded by the Federal law.

The Court of Appeals, in effect, holds that Congress must go further than legislation specifically requiring the inspection before action by State officers is excluded. The court holds, in effect, that Congress must, in addition to requiring Federal inspection, also prohibit State legislation on the same subject, and in applying the rule the court held that *before State inspection will be enjoined* it must appear (1) that the Federal Government either passed the commodity seized by the State, or (2) that the Federal Government seized it before it was seized by the State inspectors, leaving the State free to seize any packing stock butter not actually inspected and passed or seized by the Federal Government.

The Renovated Butter Act and the Regulations promulgated thereto are not less comprehensive with respect to the subject matter involved than the Federal statutes construed in the following cases:

Hines v. *Davidowitz* (M. M. S.), 61 Sup. Ct. Rep. 399;
Oregon-Washington R. R. Co. v. *Washington*, 270 U. S. 87;
Napier v. *Atlantic Coast Line R. R. Co.*, 272 U. S. 606;
Northern Pacific R. R. v. *Washington*, 222 U. S. 370;
So. R. R. v. *Reid*, 222 U. S. 424;
Missouri-Pacific R. R. v. *Stroud*, 267 U. S. 404;
L. & N. R. R. Co. v. *State*, 16 Ala. App. 199;
C. R. I. & P. Co. v. *Hardwick Co.*, 226 U. S. 426;
Adams Express Co. v. *Croninger*, 226 U. S. 491;
Erie R. R. v. *New York*, 233 U. S. 671;
New York Central R. R. v. *Winfield*, 244 U. S. 147;
Erie R. R. Co. v. *Winfield*, 244 U. S. 170;
Charleston & W. C. R. R. Co. v. *Varnville Furniture Co.*, 237 U. S. 597.

In each case it was held that by the Act involved, Congress had completely occupied the field with respect to the subject matter of the legislation to the exclusion of State action.

3. The highest court in Alabama decided that the operation of the Ala. Ag. Code was confined to intrastate commerce. *State* v. *Cecil*, 216 Ala. 391.

The United States Circuit Court of Appeals for the Fifth Circuit held in effect that the Ala. Ag. Code was not confined in its operation to intrastate commerce, but authorized the respondent officers to interfere with packing stock butter in interstate commerce. The ruling of the United States Circuit Court of Appeals is in conflict with the rule announced by this Court in *Erie R. R.* v. *Tompkins*, 304 U. S. 64, where it was held in effect that United States courts must follow the construction placed on the State statute by the highest court in the State.

4. The decision of the United States Circuit Court of Appeals for the Fifth Circuit is in irreconciliable conflict with certain decisions of this Honorable Court in which it was decided that where the State action complained of was within the scope of the authority delegated to an officer or instrumentality of the United States, State action was excluded. The cases are:

Oregon-Washington R. R. Co. v. *Washington*, 270 U. S. 87;

Napier v. *Atlantic Coast Line R. R. Co.*, 272 U. S. 606;

Hines v. *Davidowitz* (mms.), 61 Supreme Court Reporter, 399.

And numerous other cases.

5. The United States Circuit Court of Appeals for the Fifth Circuit erroneously ruled that *Mintz* v. *Baldwin*, 298

U. S. 346; *Pacific States* v. *White*, 296 U. S. 176; *Kelly* v. *Washington*, 302 U. S. 1; *South Carolina Highway Dept.* v. *Barnwell*, 303 U. S. 177; *Townsend* v. *Yeomans*, 301 U. S. 441; *Currin* v. *Wallace*, 306 U. S. 1, supports its holding that to obtain relief from enforcement of State police regulations upon the claim that Federal regulations have preempted the field, it must appear that there is such an essential conflict between State and Federal laws and regulations as that compliance with the one is defiance of the other, *and therefore, a prohibition against State regulation must be implied*, and that State officers enforcing by seizure police regulations with respect to foods will not be enjoined at the suit of persons complaining of them merely because there exists similar Federal laws and regulations in respect to the same subject matter and there has been no Federal seizure.

Questions Presented.

The controlling question is, whether Congress has preempted and completely occupied the field of inspection of raw material in interstate commerce, for manufacture into process butter for sale and shipment in interstate commerce, to the exclusion of State regulation.

A secondary question is, whether the State of Alabama has authorized its officers to seize raw material, moving in interstate commerce, for the purpose of being processed or renovated in Alabama for sale and shipment in interstate commerce.

Specification of Errors to be Urged.

The Circuit Court of Appeals erred:

1. In affirming the decree of the United States District Court for the Middle District of Alabama.

2. In holding, in effect, that Congress has not preempted the field as to the inspection and regulation of raw material

in interstate commerce for manufacture into processed butter for sale and shipment in interstate commerce.

3. In holding, in effect, that the Alabama statute (the Alabama Agricultural Code) authorizes officers of the State of Alabama to seize raw material moving in interstate commerce for manufacture into processed butter for sale and shipment in interstate commerce.

4. In holding, in effect, that State officers may supplement and duplicate the work of the Federal Government in policing raw material in interstate commerce going into the manufacture of process butter for sale and shipment in interstate commerce.

5. In holding, in effect, that to obtain relief from enforcement of State Police Regulations upon the claim that Federal Regulations have preempted the field, it must appear that there is *an express or implied prohibition against State regulations.*

6. In holding, in effect, that to obtain relief from enforcement of State Police Regulations upon the claim that Federal Regulations have preempted the field, it must appear that there is such an essential conflict between State and Federal laws and regulations as that compliance with the one is defiance of the other, and therefore a prohibition against State regulation must be implied.

7. In holding, in effect, that State officers enforcing by seizure police regulations with regard to foods, will not be enjoined at the suit of persons complaining of them merely because there exist similar Federal laws and regulations in respect to the same subject matter and there has been no Federal seizure.

WHEREFORE your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the United

States Circuit Court of Appeals for the Fifth Circuit, commanding said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said court had in the case numbered and entitled on its docket, #9647, *Cloverleaf Butter Company, Appellant,* v. *Haygood Patterson, as Commissioner of Agriculture & Industries of the State of Alabama, et al., Appellees,* to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the judgment herein of said United States Circuit Court of Appeals for the Fifth Circuit be reversed by the Court and for such other relief as to this Court may seem proper.

February 21st, 1941.

CLOVERLEAF BUTTER COMPANY,
By ERLE PETTUS,
HORACE C. WILKINSON,
VICTOR H. SMITH,
Counsel for Petitioner.

APPENDIX.

FEDERAL STATUTES.

FEDERAL REGULATIONS.

STATE STATUTES.

FEDERAL STATUTES.

Renovated Butter Act.

U. S. C. A., Title 26, Sections 990-996; now § 2320, et seq., of the Internal Revenue Code:

"Sec. 990. Definitions.

"(a) Butter. For the purpose of this chapter and sections 1366, and 1367, the word 'butter' shall be understood to mean the food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common salt, and with or without additional coloring matter.

"(b) Adulterated Butter. 'Adulterated butter' is defined to mean a grade of butter produced by mixing, reworking, rechurning in milk or cream, refining, or in any way producing a uniform, purified, or improved product from different lots or parcels of melted or unmelted butter or butter fat, in which any acid, alkali, chemical, or any substance whatever is introduced or used for the purpose or with the effect of deodorizing or removing therefrom rancidity, or any butter or butter fat, with which there is mixed any substance foreign to butter as defined in subsection (a), with intent or effect of cheapening in cost the product of any butter in the manufacture or manipulation of which any process or material is used with intent or effect of causing the absorption of abnormal quantities of water, milk, or cream.

"(c) Process or Renovated Butter. 'Process butter' or 'renovated butter' is defined to mean butter which has been subjected to any process by which it is melted, clarified or

refined and made to resemble genuine butter, always excepting 'adulterated butter' as defined by subsection (b).

"Sec. 991. Tax.

"(a) Rate—(1) Adulterated Butter. Upon adulterated butter, when manufactured or sold or removed for consumption or use, there shall be assessed and collected a tax of 10 cents per pound, and any fractional part of a pound shall be taxed as a pound. (May 9, 1902, c.)

"(2) Process or Renovated Butter. Upon process or renovated butter, when manufactured or sold or removed for consumption or use, there shall be assessed and collected a tax of one-fourth of 1 cent per pound, and any fractional part of a pound shall be taxed as a pound.

"(b) By Whom Paid. The tax to be levied by subsection (a) shall be paid by the manufacturer.

"(c) How Paid—(1) Stamps. The tax to be levied by subsection (a) shall be represented by coupon stamps.

"Sec. 992. Manufacturers.

"(a) Definition. Every person who engages in the production of process or renovated butter or adulterated butter as a business shall be considered to be a manufacturer thereof.

"(b) Packing, Stamping, and Selling Requirements—(1) Adulterated Butter. All adulterated butter shall be packed by the manufacturer thereof in firkins, tubs, or other wooden, tin-plate, or paper packages not before used for that purpose, containing, or encased in a manufacturer's package made from any of such materials of, not less than ten pounds, and marked, stamped, and branded as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, and all sales made by manufacturers of adulterated butter shall be in original, stamped packages. Every manufacturer of adulterated butter shall securely affix, by pasting, on each package containing adulterated butter manufactured by him a label on which shall be printed, besides the number of the

manufactory and the district and State in which it is situated, these words:

"'Notice.—That the manufacturer of the adulterated butter herein contained has complied with all the requirements of law. Every person is cautioned not to use either this package again or the stamp thereon, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases.'

"(c) Books and Returns. Every manufacturer of process or renovated butter or adulterated butter shall file with the collector of the district in which his manufactory is located such notices and inventories, shall keep such books and render such returns of material and products, and conduct his business under such surveillance of officers and agents as the Commissioner, with the approval of the Secretary, may by regulation require.

"(d) Factory Number and Signs. Every manufacturer of process or renovated butter or adulterated butter shall put up such signs and affix such number to his factory as the Commissioner, with the approval of the Secretary, may by regulation require.

"(e) Bonds. Every manufacturer of process or renovated butter shall file with the collector of the district in which his manufactory is located such bonds as the Commissioner, with the approval of the Secretary, may by regulation require. But the bond required of such manufacturer shall be with sureties satisfactory to the collector and in a penal sum of not less than $500; and the sum of said bond may be increased from time to time and additional securities required at the discretion of the collector or under instructions of the Commissioner.

"Sec. 993. Dealers in Adulterated Butter.

"(a) Dealer Defined. Every person who sells adulterated butter shall be regarded as a dealer in adulterated butter.

"(b) Retail Dealer Defined. Every person who sells adulterated butter in less quantities than ten pounds at

one time shall be regarded as a retail dealer in adulterated butter.

"(c) Selling Requirements. Dealers in adulterated butter must sell only original or from original stamped packages, and when such original stamped packages are broken the adulterated butter sold from same shall be placed in suitable wooden, tinplate, or paper packages, which shall be marked and branded as the Commissioner, with the approval of the Secretary, shall prescribe.

"Sec. 994. Books and Returns of Wholesale Dealers in Adulterated and Process or Renovated Butter. Wholesale dealers in process, renovated, or adulterated butter shall keep such books and render such returns in relation thereto as the Commissioner, with the approval of the Secretary, may, by regulation, require; and such books shall be open at all times to the inspection of any internal revenue officer or agent.

"Sec. 995. Inspection, Manufacture, Storage, and Marking of Process or Renovated Butter.

"The Secretary of Agriculture is authorized and required to cause a rigid sanitary inspection to be made at such times as he may deem proper or necessary; of all factories and storehouses where process or renovated butetr is manufactured, packed, or prepared for market and of the podnets thereof and materials going into the manufacture of the same. All process or renovated butter and the packages containing the same shall be marked with the words 'Renovated Butter' or 'Process Butter' and by such other marks, labels, or brands and in such manner as may be prescribed by the Secretary of Agriculture, and no process or renovated butter shall be shipped or transported from its place of manufacture into any other State or Territory or the District of Columbia, or to any foreign country, until it has been marked as provided in this section. The Secretary of Agriculture shall make all needful regulations for carrying this section and sections 996(c) and 997(b) into effect and shall cause to be ascertained and reported from time to time the quantity and quality of process or renovated butter manufactured, and the character and con-

dition of the material from which it is made. And he shall also have power to ascertain whether or not materials used in the manufacture of said process or renovated butter are deleterious to health or unwholesome in the finished product, and in case such deleterious or unwholesome materials are found to be used in product intended for exportation or shipment into other States or in course of exportation or shipment he shall have power to confiscate the same.

"Sec. 996 Penalties.

"(a) Adulterated Butter—(1) False Branding; Sale, Packing, or Stamping in Violation of Law. Every person who knowingly sells or offers for sale, or delivers or offers to deliver any adulterated butter in any form than in new, wooden or paper packages as described in subsection (c) of section 993, or who packs in any package any adulterated butter in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law, shall be fined for each offense not more than $1,000 and be imprisoned not more than two years.

"(2) Omission or Removal of Label. Every manufacturer of adulterated butter who neglects to affix the label required under paragraph (1) of subsection (b) of section 992 to any package containing adulterated butter made by him, or sold or offered for sale for or by him, and every person who removes any such label so affixed from any such package shall be fined $50 for each package in respect to which such offense is committed.

"(b) Failure of Wholesale Dealers to Keep or Permit Inspection of Books, or to Render Returns. Any person who willfully violates any of the provisions of section 994 shall for each such offense be fined not less than $50 and not exceeding $500, and be imprisoned not less than thirty days nor more than six months.

"(c) Failure to Comply with Provisions Relating to the Manufacture, Storage, and Marking of Process or Renovated Butter. Any person, firm or corporation violating any of the provisions of section 995 shall be deemed guilty

of a misdemeanor and on conviction thereof shall be punished by a fine of not less than $50 nor more than $500 or by imprisonment not less than one month nor more than six months, or by both said punishments, in the discretion of the court."

Pertinent Sections Meat Inspection Laws.

United States Code Annotated, Title 21, Sections 72-79.

72. Post mortem examination of carcasses and marking or labeling; destruction of carcasses condemned; reinspection. For the purpose hereinbefore set forth the Secretary of Agriculture shall cause to be made by inspectors appointed for that purpose a post mortem examination and inspection of the carcasses and parts thereof of all cattle, sheep, swine, and goats to be prepared for human consumption at any slaughtering, meat canning, salting, packing rendering, or similar establishment in any State, Territory, or the District of Columbia for transportation or sale as articles of interstate or foreign commerce; and the carcasses and parts thereof of all such animals found to be sound, healthful, wholesome, and fit for human food shall be marked, stamped, tagged, or labeled as "Inspected and passed"; and said inspectors shall label mark stamp or tax as "Inspected and condemned" all carcasses and parts thereof of animals found to be unsound, unhealthful, unwholesome, or otherwise unfit for human food; and all carcasses and parts thereof thus inspected and condemned shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Secretary of Agriculture may remove inspectors from any such establishment which fails to so destroy any such condemned carcass or part thereof, and said inspectors, after said first inspection, shall, when they deem it necessary, reinspect said carcasses or parts thereof to determine whether since the first inspection the same have become unsound, unhealthful, unwholesome, or in any way unfit for human food, and if any carcass or any part thereof shall, upon examination and inspection subsequent to the first examination and inspection, be found to be unsound, unhealthful, unwholesome, or

otherwise unfit for human food, it shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Secretary of Agriculture may remove inspectors from any establishment which fails to so destroy any such condemned carcass or part thereof.

73. Examination of carcasses brought into slaughtering or packing establishments, and of meat food products issued from and returned thereto. The foregoing provisions shall apply to all carcasses or parts of carcasses of cattle, sheep, swine, and goats, or the meat or meat products thereof which may be brought into any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, and such examination and inspection shall be had before the said carcasses or parts thereof shall be allowed to enter into any department wherein the same are to be treated and prepared for meat food products; and the foregoing provisions shall also apply to all such products, which, after having been issued from any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, shall be returned to the same or to any similar establishment where such inspection is maintained.

74. Inspectors of meat food products; marks of inspection; destruction of condemned products; products for export. For the purpose hereinbefore set forth the Secretary of Agriculture shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all meat food products prepared for interstate or foreign commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, and for the purposes of any examination and inspection said inspectors shall have access at all times, by day or night, whether the establishment be operated or not, to every part of said establishment; and said inspectors shall mark, stamp, tag, or label as "Inspected and passed" all such products found to be sound, healthful, and wholesome, and which contain no dyes, chemicals, preservatives, or ingredients which render such meat, or meat food products unsound, unhealthful, unwholesome, or unfit for human food; and said inspectors shall label, mark, stamp, or tag as "Inspected and

condemned" all such products found unsound, unhealthful, and unwholesome, or which contain dyes, chemicals preservatives, or ingredients which render such meat or meat food products unsound, unhealthful, unwholesome, or unfit for human food, and all such condemned meat food products shall be destroyed for food purposes, as hereinbefore provided, and the Secretary of Agriculture may remove inspectors from any establishment which fails to so destroy such condemned meat food products: Provided, That subject to the rules and regulations of the Secretary of Agriculture the provisions of this section in regard to preservatives shall not apply to meat food products for export to any foreign country and which are prepared or packed according to the specifications or directions of the foreign purchaser, when no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country to which said article is to be exported; but if said article shall be in fact sold or offered for sale for domestic use or consumption then this proviso shall not exempt said article from the operation of all the other provisions of sections 71 to 94 inclusive, of this title.

75. Labeling receptacles or coverings of meat or meat food products inspected and passed; supervision by inspectors; sales under false names; trade names. When any meat or meat food product prepared for interstate or foreign commerce which has been inspected as hereinbefore provided and marked "Inspected and passed" shall be placed or packed in any can, pot, tin, canvas, or other receptacle or covering in any establishment where inspection under the provisions of sections 71 to 94, inclusive, of this title is maintained, the person, firm, or corporation preparing said product shall cause a label to be attached to said can, pot, tin, canvas, or other receptacle or covering, under the supervision of an inspector, which label shall state that the contents thereof have been "inspected and passed" under the provisions of such sections; and no inspection and examination of meat or meat food products deposited or inclosed in cans, tins, pots, canvas, or other receptable or covering in any establishment where inspection under the provisions of such sections is maintained shall be deemed to

be complete until such meat or meat food products have been sealed or inclosed in said can, tin, pot, canvas, or other receptacle or covering under the supervision of an inspector, and no such meat or meat food products shall be sold or offered for sale by any person, firm or corporation in interstate or foreign commerce under any false or deceptive name; but established trade name or names which are usual to such products and which are not false and deceptive and which shall be approved by the Secretary of Agriculture are permitted.

76. Sanitary inspection and regulation of slaughtering and packing establishments; rejection of meat or meat food products unfit for food. The Secretary of Agriculture shall cause to be made, by experts in sanitation or by other competent inspectors, such inspection of all slaughtering, meat canning, salting, packing, rendering, or similar establishments in which cattle, sheep, swine, and goats are slaughtered and the meat and meat food products thereof are prepared for interstate or foreign commerce as may be necessary to inform himself concerning the sanitary conditions of the same, and to prescribe the rules and regulations of sanitation under which such establishments shall be maintained; and where the sanitary conditions of any such establishment are such that the meat or meat food products are rendered unclean, unsound, unhealthful, unwholesome, or otherwise unfit for human food, he shall refuse to allow said meat or meat food products to be labeled, marked, stamped, or tagged as "inspected and passed".

77. Examination of cattle and food products thereof, slaughtered and prepared during nighttime. The Secretary of Agriculture shall cause an examination and inspection of all cattle, sheep, swine, and goats, and the food products thereof, slaughtered and prepared in the establishments hereinbefore described for the purposes of interstate or foreign commerce to be made during the nighttime as well as during the daytime when the slaughtering of said cattle, sheep, swine, and goats, or the preparation of said food products is conducted during the nighttime.

78. Transportation of carcasses, meat, or meat food products not properly inspected and marked. No person, firm, or corporation shall transport or offer for transportation, and no carrier of interstate or foreign commerce shall transport or receive for transportation from one State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, or to any place under the jurisdiction of the United States, or to any foreign country, any carcasses or parts thereof, meat, or meat food products thereof which have not been inspected, examined, and marked as "Inspected and passed," in accordance with the terms of sections 71 to 94, inclusive, of this title, and with the rules and regulations prescribed by the Secretary of Agriculture.

79. Forgery, alteration or unauthorized use of marks, labels, or other identification devices or certificates. No person, firm, or corporation, or officer, agent, or employee thereof, shall forge, counterfeit, simulate, or falsely represent, or shall without proper authority use, fail to sue, or detach, or shall knowingly or wrongfully alter, defact, or destroy, or fail to deface or destroy, any of the marks, stamps, tags, labels, or other identification devices provided for in section 71 to 94, inclusive, of this title, or in and as directed by the rules and regulations prescribed hereunder by the Secretary of Agriculture on any carcasses, parts of carcasses, or the food product, or containers thereof, subject to the provisions of such sections or any certificate in relation thereto, authorized or required by such sections or by the said rules and regulations of the Secretary of Agriculture.

1. Object of section. The plain object of this section is to safeguard the food products in question against alteration or substitution, and thus enable the officials of the government to systematize and render effective the process of inspection; an object that is interfered with if the tags or other identification devices are destroyed, whether they be destroyed by those engaged in the business or by others. U. S. *v.* Lewis (Kan. 1914), 235 U. S. 282, 35 S. Ct. 44, 59 L. Ed. 229.

2. Unauthorized use of marks or labels.—Shipment of inspected hams from Chicago to Pittsburgh, and wrapping thereof, after being boiled smoked, in paper bearing labels as to inspection held a violation of sections 71 to 94 of this title. Armour & Co. *v.* U. S. (Pa. 1915), 222 F. 233, 138 C. C. A. 63.

3. Application to renovated butter.—Under previous provisions similar to this section, which were made applicable to process or renovated butter, as are sections 71 to 94 of this title, it was held that the removal of stamps and caution notices attached to original packages of renovated butter, which was the subject of interstate commerce, constituted an offense. U. S. *v.* Green (D. C. N. Y. 1905), 137 F. 179.

4. Act March 3, 1891, 4 (superseded)—See (1895) 21 Op. Atty. Gen. 128 as to false labels.

Regulations No. 9 of U. S. Treasury Department are printed in full beginning page 27 of record.

U. S. Treasury Department
Bureau of Internal Revenue

Regulations No. 9

Relating to the

Taxes on Oleomargarine Adulterated Butter and Process or Renovated Butter.

Under the Acts of

August 2, 1886 (24 Stat., 209), May 9, 1902 (32 Stat., 193), August 10, 1912 (37 Stat., 273), October 1, 1918 (40 Stat., 1008), July 10, 1930 (46 Stat., 1022), March 4, 1931 (46 Stat., 1549), and February 24, 1933 (47 Stat., 902).

Revised April, 1936

(d) Deleterious products seizable.—The Secretary of Agriculture will determine whether or not materials being used in the manufacture of process or renovated butter will be deleterious to health or unwholesome in the finished product. If any materials which have been so determined to be deleterious to health or unwholesome in the finished

product are found to be present in any process or renovated butter, intended for, or in course of, exportation or shipment in interstate commerce, such process or renovated butter will be confiscated.

B. D. I. Order No. 1—Revised

Issued December 24, 1936

UNITED STATES DEPARTMENT OF AGRICULTURE
BUREAU OF DAIRY INDUSTRY

Regulations for Carrying into Effect the Process or Renovated Butter Act

Introduction

Under authority conferred upon the Secretary of Agriculture by the act of Congress approved May 9, 1902, entitled "An act to make oleomargarine and other imitation dairy products subject to the laws of any state, or territory, or the District of Columbia, into which they are transported, and to change the tax on oleomargarine, and to impose a tax, provide for the inspection, and regulate the manufacture and sale of certain dairy products, and to amend an act entitled 'An act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation and exportation of oleomargarine approved August 2, 1886' " (32 Stat. 193-197; U. S. C., title 26, sec. 990-997); and by the act of Congress approved August 10, 1912, entitled "An act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1913" (37 Stat. 273); the following regulations are made and are hereby promulgated, which for purposes of identification are designated B. D. I. Order No. 1—Revised, superseding S. R. A.. 1—Bureau Dairying, issued April, 1925; and B. D. Order 1, issued February 14, 1925; which are hereby revoked.

Henry A. Wallace, Secretary of Agriculture.

Washington, D. C., December 24, 1936.

Regulation 1.—Short Title of Act

For the purpose of these regulations the act entitled "An act to make oleomargarine and other imitation dairy

products subject to the laws of any State or Territory or the District of Columbia into which they are transported, and to change the tax on oleomargarine and to impose a tax, provide for the inspection, and regulate the manufacture and sale of certain dairy products, and to amend an act entitled 'An Act Defining Butter', also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine approved August 2, 1886", approved May 9, 1902 (32 Stat. 103-199; U. S. C., title 26, sec. 990-997, as amended by the act of August 10, 1912 (37 Stat. 273, U. S. C., title 26, sec. 997 (c), entitled "An act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1913", shall be known and referred to as the Process or Renovated Butter Act. The Chief of the Bureau of Dairy Industry is charged, under the direction of the Secretary, with the administration of these regulations.

Regulation 2.—Definitions

For the purpose of these regulations the following words, phrases, names, and terms shall be construed, respectively, to mean:

Section 1. The Meat Inspection Act.—The act of June 30, 1906, entitled "An act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and seven" (34 Stat. 674-679) as reenacted by act of March 4, 1907 (34 Stat. 1260-1265; U. S. C., title 21, secs. 71 to 94), entitled "An act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and eight", the sanitary provisions of which are made applicable to renovated-butter factories by act of Aug. 10, 1912 (37 Stat. 273; U. S. C., titles 26, sec. 997 (c), entitled "An act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1913."

Sec. 2. Department.—The United States Department of Agriculture.

Sec. 3. Bureau.—The Bureau of Dairy Industry of the United States Department of Agriculture.

Sec. 4. Chief of Bureau.—The administrative head of the Bureau of Dairy Industry of the United States Department of Agriculture.

Sec. 5. Inspector.—Any Department officer or employee authorized to perform any duties in connection with the administration of these regulations.

Sec. 6. Person.—Natural persons, individuals, firms, partnerships, corporations, companies, societies, and associations, and agent, broker, officer, employee, or member thereof. This term shall import both the plural and the singular as the case may be.

Sec. 7. Butter.—The food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common salt, and with or without additional coloring matter.

Sec. 8. Par. 1. Process or renovated butter.—Butter which has been subjected to any process by which it is melted, clarified, or refined and made to resemble genuine butter, always excepting adulterated butter as defined in section 4 of the act of May 9, 1902 (32 Stat. 195).

Par. 2. Process or renovated butter must contain at least 80 per cent by weight of milk fat.

Par. 3. The term "process butter" and "renovated butter" are used synonymously and it is immaterial whether a manufacturer designates the product "process butter" or "renovated butter."

Regulation 3.—Sanitation and Sanitary Inspection of Process or Renovated Butter Factories

Section 1. For the purpose of effectively administering the Process or Renovated Butter Act, rigid sanitary inspections will be made at such times and as often as necessary of all process or renovated butter factories and storehouses where process or renovated butter is manufactured, packed, or prepared for market.

Sec. 2. Inspectors shall have access at all times by day or night to every part of any process or renovated butter factory or storehouse.

* * * * * * *

Regulation 4.—Sanitation and Sanitary Inspection of Products of and Material From Which Process or Renovated Butter is Manufactured

Section 1. "Rigid" sanitary inspections will also be made of the character and condition of the materials going into the manufacture of process or renovated butter and of the quantity and quality of process or renovated butter manufactured.

Sec. 2. Due care must be taken to prevent process or renovated butter, in any stage of its manufacture, from falling on the floor, and in the event of its having so fallen, the soiled portion shall not be used. Butterfat collected from floors, drains, or catch basins shall not be used in the manufacture of process or renovated butter.

Sec. 3. Only good clean, and wholesome water and ice shall be used in the preparation and manufacture of process or renovated butter and, whenever there is any doubt regarding the purity of the water supply, the facts shall be reported to the Chief of Bureau.

Sec. 4. Air used in blowing or aerating the oil during the process of manufacture shall be pure and clean, and shall be taken from the outside of the building; and in order to prevent the use of air which is contaminated with dust, smoke, objectionable odors, etc., some approved method of purification, such as washing or filtering through cotton, shall be provided.

Sec. 5. In manufacturing process or renovated butter all cream, milk or skim milk used must be pasteurized.

Sec. 6. All milk, skim milk, dried milk, dried skim milk, cream, and analogous substances used in the making of process or renovated butter shall be kept, stored, and handled in a sanitary manner in accordance with accepted dairy practices.

Sec. 7. All other materials including salt and butter color entering into the manufacture of process or renovated butter shall also be kept, stored, and handled in a sanitary manner.

Sec. 8. All cartons, parchment wrappers, liners, packages, tubs, cans, tins, or other containers used for packing process or renovated butter shall be stored, kept, and handled in a sanitary manner.

Regulation 5.—The Marking, Labeling and Branding of Process or Renovated Butter

Section 1. (a) Before removal from the factory each package of process or renovated butter shall have legibly printed or stenciled on one of its sides the legend "Process Butter" or "Renovated Butter"; also the factory number, district, and State, and the net weight, in the following manner:

Process Butter
Factory No. 2, 2d Dist. New York
Net Weight, 60 lbs.

Sec. 9. Inspectors of the Department of Agriculture, appointed for the purpose by the Secretary of Agriculture, are authorized to enter all factories and storehouses where process or renovated butter is manufactured, packed, or prepared for market for the purpose of examination or inspection authorized by this act.

Sec. 10. Periodic inspection of each factory shall be made by such inspectors who will submit a complete report to the Chief of Bureau on the sanitation of the premises, the character and condition of the materials used, and the quantity and quality of process or renovated butter produced. The sanitary provisions of the Meat Inspection Act shall apply to the sanitary inspection of process or renovated butter factories. (See act of Aug. 10, 1912 (37 Stat., 273).)

Sec. 11. Process or renovated butter containing any filthy, decomposed, or putrid animal or vegetable substance shall be deemed adulterated under the Foods and Drugs Act.

Sec. 12. The Secretary of Agriculture will determine whether or not materials being used in the manufacture of process or renovated butter will be deleterious to health or

unwholesome in the finished product. If any materials which have been so determined to be deliterious to health or unwholesome in the finished product are found to be present in any process or renovated butter, intended for, or in course of, exportation or shipment in interstate commerce, such process or renovated butter will be confiscated, as provided for in regulation 7, section 4 hereof.

Sec. 13. Original packages of process or renovated butter for export shall be stamped and branded as in the case of packages for domestic use and may be covered with cloth, jute or burlap. The outer covering shall be conspicuously stenciled with the legend "Process Butter" or "Renovated Butter", in boldface gothic letters not less than an inch square, and the words "For Export Only" on the line beneath, in similar letters not less than three-eighths of an inch square.

Sec. 14. Process or renovated butter for export shall be examined by inspectors of the Department of Agriculture, who will issue a certificate as to its purity, quality, and grade and the sufficiency of the stamps and brands. If inspection is not made before the outer coverings are placed upon the packages, the exporter may be required to remove them.

(The foregoing secs. 1 to 14, have been promulgated by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury and the Secretary of Agriculture.)

Regulation 6.—Reports.

Section 1. Each process or renovated butter factory shall furnish to authorized inspectors accurate information as to all matters required in making their reports.

Regulation 7.—Process or Renovated Butter Intended for or in the Course of Interstate Commerce or for Export.

Section 1. To determine whether or not materials used in the manufacture of process or renovated butter are deleterious to health or unwholesome in the finished product, a sample of such butter shall be taken.

Sec. 2. Such sample shall be drawn in the following manner: A sample will be taken from every package of each lot. However, (A) if a lot includes two or more packages from one churning, a sample may be taken from one package only; or (B) if the separate churnings are not indicated, not less than one sample from each 10 tubs may be taken. Additional samples may be taken if, in the opinion of the inspector, such action is necessary to obtain representative samples of such butter.

Sec. 3. The samples thus obtained, properly identified, shall be promptly forwarded to the Department for examination and chemical analysis.

Sec. 4. If such butter is found upon such examination and such chemical analysis to be deleterious to health or unwholesome, and such butter is intended for exportation or shipment into other States, or is the course of exportation, or in the course of such shipment, the Secretary shall confiscate the same to prevent its use for food purposes. The Secretary may release such butter to its owner for industrial use, upon such conditions as he deems necessary to prevent its use for food purposes.

Sec. 5. Any butter suspected of being process or renovated, or adulterated, wherever found will be sampled as herein provided. The samples thus obtained, properly identified, shall be promptly forwarded to the Department for examination and chemical analysis, together with a statement outlining the circumstances of the collection of sample.

Sec. 6. All process or renovated butter intended for exportation or in the course of exportation must be marked as provided in these regulations.

Sections of Alabama Agricultural Code of 1927.

37. Possession: Sale and Delivery of Prohibited Articles. —No person within this State shall manufacture for sale therein, have in possession with intent to sell, offer or expose for sale, sell, or deliver any article of food or drugs which is adulterated or misbranded within the meaning of this Article.

38. Definition of Words and Terms.—The word "article" when referring to food or drugs, is used in the broad and comprehensive sense and has reference to the food product or the drug product in question. The term "food" as used herein shall include all articles of food, drink, confectionery, or condiment, whether simple, mixed or compound, used or intended for use by man or domestic animals. The term "drug" as used herein shall include all medicines and preparations recognized in the U. S. Pharmacopoeia or National Formulary for internal or external use and any substance of mixture of substances to be used for the cure, mitigation or prevention of disease in man or domestic animals. The words "standard of purity or quality" herein used shall refer to and include the standards of purity for food products promulgated by the State Board of Agriculture and statutes of this State.

39. Adulteration of Food.—An article shall be deemed adulterated in the case of food: First. If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength. Second. If any substance has been substituted wholly or in part for the article. Third. If any valuable constituent of the article has been wholly or in part abstracted. Fourth. If it be mixed, colored, powdered, coated, stained, or otherwise treated in a manner whereby damage or inferiority is concealed, or in a manner whereby the appearance of said Article is improved; provided this shall not apply to the precoloring or processing of fruits where such precoloring or processing does not conceal damage or inferiority. Fifth. If it contains any poisonous or deleterious ingredient which may render such article injurious to health; Provided, that when in the preparation of food products for shipment they are preserved by an external application applied in such a manner that the preservative is necessarily removed mechanically, or by maceration in water, or otherwise, and directions for the removal of said preservative shall be printed on the covering of the package, the provisions of this Article shall be construed as applying only when said products are ready for consumption. Sixth. If it consist in whole or in part of a filthy, decomposed, or putrid animal

or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter. Seventh. If in the course of its preparation of manufacture an ingredient of inferior food value has been substituted in whole or in part for an ingredient of greater food value. Eighth. If it does not conform to the standard of purity or quality established for the article.

71. Renovated Butter:—No person shall sell in this State any butter that is produced by taking original packing stock butter, or other butter, or both, and melting the same so that the butter fat can be drawn off or extracted, then mixing the said butter fat with skimmed milk, or milk, or cream, or other milk product, and re-churning or re-working the said mixture, or that produced by any process that is commonly known as boiled, process or renovated butter, unless the words "renovated butter" shall be plainly branded with Gothic or bold faced letters at least three-fourths of an inch in height on the top and sides of each tub, or box, or pail, or other kind of case, or package, or on the wrapper of prints or rolls in which it is put up. If such butter is exposed for sale uncovered or not in a case or package, a placard containing the labels so printed shall be attached to the mass of butter in such manner as to easily be seen and read by the purchaser. The branding or marking of all packages shall be in the English language, and in a conspicuous place so as to be easily seen and read by the purchaser.

72. Commissioner Charged with Enforcement,—The Commissioner and his duly authorized agents shall be charged with the proper enforcement of all the provisions of this Article.

Section 217. As Amended. That Section 217 of Article Twenty-three of the 'Agricultural Code of Alabama,' of 1927, be and the same is hereby amended so as to read as follows: Section 217. Suspension of Sale of Article.—If at any time the Commissioner or his duly authorized agent, shall have reason to believe that any product or products or article mentioned in the succeeding sections of this Arti-

cle, which are held in possession, delivered, kept, offered or exposed for sale in this State, do not comply with the requirements of this Article or other Article of this Code as to ingredients, substance, analysis, marking or labelling, weight or measure of the same, it shall be his duty by written order to suspend the sale of the same until he shall have satisfied himself, or shall be satisfied by an analysis, or otherwise, that such product or article is made up, compounded or marked as required by law and rules and regulations under authority of law.' If he shall find that the same does not comply with such laws and rules and regulations, either before or after the making of such suspension order, then he is authorized to proceed with regard to the same as provided in the succeeding Sections of this Article, or he may order in writing the same to be held at his disposition pending the placing of such product or article in such condition as will meet the requirements of such laws, rules and regulation, under the supervision and direction of the Commissioner or his duly authorized agent, or at the discretion of the Commissioner proceeding with regards to the same as provided in the succeeding Sections of this Article. Provided in case the owner of such product or article denies by written notice to the Commissioner or his agent that the same is not in compliance with the laws, rules or regulations and requests a hearing thereon, the Commissioner or his agent shall as soon as practicable thereafter proceed as provided in the succeeding Sections of this Article, in order that the Court may hear and decide said issue and proceed as provided for in the succeeding Sections of this Article. Any person who moves, transports, sells or in any other manner disposes of any product or article after such product has been ordered suspended or held as hereinbefore provided shall be guilty of a misdemeanor and upon conviction thereof fined not more than Five Hundred ($500.00) Dollars or imprisoned for not more than six months or both, provided that such product or article may be moved, transported or otherwise disposed of by and in compliance with written order by the Commissioner.

Sec. 3 pp. 1103 and 1104 of the Acts of 1935.

218. Proceeding to Condemn Seized Article.—Any fertilizer, fertilizer material, ground limestone, paint, white lead, linseed oil, turpentine, kerosene or other illuminating oils, gasoline, benzine or other liquid motor fuels, insecticides and fungicides, commercial feeds, agricultural seeds, eggs, vinegar, sausage, milk, cream, ice cream or other dairy products, imitation butter and cheese, or any article of food or drug which is adulterated misbranded or under standard, grade, weight or measure claimed within the meaning of any provision of this Code, and which is manufactured for sale, held in possession with intent to sell, offered or exposed for sale, or sold or delivered within this State, shall be liable to be proceeded against in the Circuit Court of the County where the same is found and seized for confiscation by writ of attachment for condemnation. Such writ shall issue upon the sworn complaint of the Commissioner or his duly authorized agent, taken by an officer authorized to administer an oath to the effect that such articles or product is adulterated or misbranded or is under standard, grade, weight or measure claimed, as the case may be within the meaning of this Article. The said sworn complaint by said Commissioner or his duly authorized agent, may be amended at any stage of the proceedings. Said writ shall be returnable in five days to the Court issuing the writ; such Court shall hear and decide whether the allegations of the complaint are true and whether said article or product shall be condemned and confiscated. Such hearing shall not be had until five days' notice of the date therefor shall have been served on the owner, his agent, or any other party having an interest in the same, except in case defined in subhead (a). Service of a copy of the writ of attachment showing the returns of the attaching officer shall be sufficient notice for the purposes of this Section. Such writ may be executed by the Commissioner, his duly authorized agent, or by any sheriff or constable in the State. Upon the seizure of the article or product described in the affidavit, it shall be the duty of the officer or person executing the writ to return same to the Circuit Court, with his return thereon, and within five days after its return, the Court shall make up an issue between the State as Plaintiff and the property seized as defendant. (a) In the event that

the owner or his agent cannot be found in this State, then said service may be perfected by posting a copy of the writ in a conspicuous place upon the premises where the goods were found and seized, and by mailing a copy thereof by registered mail to the owner, or his agent, to his last known address, and this shall be deemed to be sufficient service of the notice required by this Section. If upon the return day of such writ of attachment, the owner of the article or product, his agent or other party having an interest in same thus notified fails to appear and show cause why said goods should not be condemned, judgment of condemnation and confiscation shall, upon such default, be rendered by the Court on the basis of said complaint. If such owner or agent or other party having an interest in such article or product shall on or before the return day of the writ of attachment, or upon such other day as the Court upon application of such party may determine, shall file an answer upon oath denying the allegations of adulteration, misbranding, or under standard, grade, weight or measure, as the case may be, in said complaint, the issue thus raised may be determined by the Court after hearing all the evidence offered by or in behalf of all the parties to the proceedings. Any such party may demand a jury trial of any issue of fact to be determined in the proceedings instituted hereunder, and in case a jury trial is demanded, the judgment rendered by the Court shall be in accordance with the facts as found by such jury; provided, however, that the verdict of the jury may be set aside by the Court where manifestly contrary to the evidence of law. If a judgment of condemnation and confiscation is rendered against such article or product as being adulterated, misbranded, or under standard, grade, weight or measure, within the meaning of this Article, the same shall be disposed of by destruction or sale, as the Court may direct, and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Agricultural Fund, but such goods shall not be sold contrary to the provisions of this Article; provided, however, that upon the payment of the costs of such attachment proceedings and the execution and delivery of a good and sufficient bond to the effect that such article shall not be sold or otherwise disposed of contrary to the provisions

of this Article, the Court may be ordered direct that such article or product shall be delivered to the owner thereof.

219. Report of Violations to Solicitor. If it shall appear from examination or analysis of fertilizer, fertilizer material, ground limestone, paint, white lead, linseed oil, turpentine, kerosene or other illuminating oils, gasoline, benzene or other liquid motor fuels, insecticides and fungicides, commercial feeds, agricultural seed, eggs, vinegar, sausage, milk, cream, ice cream or other dairy products, imitation butter and cheese, or any articles of food or drugs that any of the provisions of this Article have been violated, the Commissioner shall certify or cause to be certified the facts to the county or State solicitor, with a copy of the results of the analysis or examination, and said county or State solicitor upon receipt of this information shall cause appropriate proceedings to be instituted in the proper Court, for the imposition of fines and penalties herein provided.